

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: DIGITAL TELEPORT, INC.	DOCKET NOS. TCU-98-21 TF-02-250
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**ORDER REJECTING TARIFF AND DENYING CERTIFICATE
WITHOUT PREJUDICE**

(Issued July 5, 2002)

On September 1, 1998, Digital Teleport, Inc. (Digital), filed with the Utilities Board (Board) an application for a certificate of public convenience and necessity to provide local exchange service in Iowa. The application is identified as Docket No. TCU-98-21. On October 1, 1998, the Board issued an order in that docket approving Digital's application and stating that a certificate would be issued when Digital obtained an approved tariff setting forth the prices, terms, and conditions of local exchange service in Iowa.

On June 6, 2002, Digital filed its proposed tariff with the Board, identified as Docket No. TF-02-250. The Board has reviewed the proposed tariff and will reject it.

The proposed tariff does not indicate that Digital intends to provide local exchange service. Specifically, tariff section five describes Digital's service as being a "private line service" provided over a "point-to-point" service configuration." Tariff section six addresses the rates and charges for Digital's service. However, no standard rates are listed and it appears customer rates are to be determined on an

individual case basis, depending upon Digital's costs. From the information contained in the tariff, it appears that Digital is proposing to provide data services rather than local dial tone services.

The Board has determined that hi-lo capacity intraexchange and hi capacity interexchange private line services are deregulated services.¹ In recent years, the Board has treated data services as a deregulated point-to-point private line service, which is neither tariffed nor subject to the Board's jurisdiction. The Board does not generally allow inclusion of non-jurisdictional services in intrastate tariffs. Because Digital's proposed tariff consists only of non-jurisdictional data services, there is nothing in it that is appropriately included in a local exchange tariff. The Board will therefore reject the proposed tariff.

Pursuant to Iowa Code § 476.29 (2001), "a utility must have a certificate of public convenience and necessity issued by the board before furnishing land-line local telephone service in this state." For purposes of section 476.29, a "utility" is defined as "any person . . . furnishing communications services to the public for compensation." See Iowa Code § 476.1.

Based on the information in Digital's tariff, the services Digital proposes to offer do not appear to be the type of service intended to be regulated under chapter 476. Digital's proposed offering does not amount to (or substitute for) regular

¹ See In re: Northwestern Bell Telephone Co., "Order," Docket No. RPU-84-8 (September 5, 1984).

dial-tone services, the traditional focus of the Board's telecommunications regulation. Therefore, based upon the information in Digital's tariff, the Board finds that Digital is not proposing to offer services that would cause it to be a "utility" for purposes of Iowa Code § 476.29. Accordingly, the Board will deny a certificate to Digital, without prejudice to re-filing if Digital proposes in the future to furnish services regulated by the Board.

While Digital's proposed services do not qualify for certification under the Board's rules, based on the information in Digital's application, Digital appears to be a "telecommunications carrier" as defined in 47 U.S.C. § 153(44), and, therefore, is entitled to all rights enjoyed by telecommunications carriers under 47 U.S.C. § 251. On this basis, Digital may enter into interconnection, collocation, and resale agreements with LECs pursuant to 47 U.S.C. § 251, and the Board's denial of Digital's certificate should not adversely affect Digital's ability to do so.

IT IS THEREFORE ORDERED:

1. The proposed tariff filed by Digital Teleport, Inc., on June 6, 2002, identified as Docket No. TF-02-250 is rejected.

2. The request for a certificate of public convenience and necessity initially filed on September 1, 1998, by Digital Teleport, Inc., and identified as Docket No. TCU-98-21 is denied, without prejudice.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 5th day of July, 2002.